



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2021-0201]

RIN 1625-AA00

Safety Zone; Columbia River Outfall Project, Columbia River, Vancouver, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain navigable waters of the Columbia River. This action is necessary to provide for the safety of life on these navigable waters near Knapp, WA, at Columbia River Mile 95.8. This regulation prohibits persons and vessels from being in the safety zone unless authorized by the Captain of the Port Sector Columbia River or a designated representative.

DATES: This rule is effective from 12:01 a.m. on October 1, 2021 through 11:59 p.m. on March 15, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0201 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LCDR Sean Morrison, Waterways Management Division, Marine Safety Unit Portland, U.S. Coast Guard; telephone 503-240-9319, email D13-SMB-MSUPortlandWWM@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On November 18, 2020, the Discovery Clean Water Alliance notified the Coast Guard that it would begin construction on the Phase 5A Project: Columbia River Outfall and Effluent Pipeline from 12:01 a.m. on October 1, 2021 through 11:59 p.m. on March 15, 2022, to remove and replace existing pipeline. The construction project includes the removal and replacement of an existing navigation marker (3-pile dolphin), installation of a 48" pipeline in the riverbed outside the navigation channel, and removal of an existing 30" pipeline from the riverbed. The scope of work may include the need to construct temporary pile-supported work platforms, or dredge, to access shallow water areas. Lighted barges will be used in deeper water. The Captain of the Port Sector Columbia River (COTP) has determined that potential hazards associated with the construction project would be a safety concern for anyone within the designated area of the Columbia River Outfall and Effluent Pipeline construction project. In response, on August 28, 2021 the Coast Guard published a notice of proposed rulemaking (NPRM) titled Safety Zone; Columbia River Outfall Project, Columbia River, Vancouver, WA (86 FR 47611). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this safety zone. During the comment period that ended September 10, 2021 we received no comments.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the ***Federal Register***. Delaying the effective date of this rule would be impracticable because immediate action is needed to respond to the potential safety hazards associated with the Columbia River

Outfall Projects.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP has determined that potential hazards associated with construction project would be a safety concern for anyone within the designated area of the Columbia River Outfall Project. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone during the scheduled construction period.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received no comments on our NPRM published August 28, 2021. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a safety zone from October 1, 2021, through March 15, 2022. The safety zone will cover all navigable waters of the Columbia River, surface to bottom, encompassed by a line connecting the following points beginning at the shoreline at 45°43'57.0"N, 122°45'21.0"W, west to 45°43'58.0"N, 122°45'33.0"W, south to 45°43'39.0"N, 122°45'35.0"W, thence east to 45°43'39.0"N, 122°45'21"W, and along the shoreline back to the beginning point. The duration of the zone is intended to ensure the safety of vessels and these navigable waters while the pipeline construction project is underway. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. A designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the COTP to act on his behalf, or a Federal, State, and local officer designated by or assisting the COTP in the enforcement of the safety zone. Vessel operators desiring to enter or operate with the safety zone would contact the COTP's on-scene designated representative by calling (503) 209-2468 or the Sector Columbia River

Command Center on Channel 16 VHF-FM. Those in the safety zone would comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on size, location, duration, and time-of-year of the safety zone. Vessel traffic would be able to safely transit around this safety zone which would impact a small designated area of the Columbia River during the construction project. Moreover, the Coast Guard would issue a Notice to Mariners about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have

a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and

preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting 166 days that would prohibit vessel traffic to transit the area during construction operations. It is categorically excluded from further review under paragraph L60 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165-- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1, Revision No. 01.2.

2. Add § 165.T13-0201 to read as follows:

§ 165.T13-0201 Safety Zones: Safety Zone; Columbia River Outfall and Effluent Pipeline Construction Project, Columbia River, Vancouver, WA.

(a) *Location.* The following area is a safety zone: All navigable waters of the Columbia River, surface to bottom, encompassed by a line connecting the following points beginning at the shoreline at 45°43'57.0"N/122°45'21.0"W, west to 45°43'58.0"N/122°45'33.0"W, south to 45°43'39.0"N/122°45'35.0"W, thence east to 45°43'39.0"N/122°45'21"W, and along the shoreline back to the beginning point.

(b) *Definitions.* As used in this section, designated representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the

Captain of the Port Sector Columbia River (COTP) to act on his behalf, or a Federal, State, and local officer designated by or assisting the Captain of the Port Sector Columbia River in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) Vessel operators desiring to enter or operate with the safety zone may contact the COTP's on-scene designated representative by calling (503) 209-2468 or the Sector Columbia River Command Center on Channel 16 VHF-FM. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from 12:01 a.m. on October 1, 2021, through 11:59 p.m. on March 15, 2022. It will be subject to enforcement this entire period unless the COTP or a designated representative determines it is no longer needed. The Coast Guard will inform mariners of any change to this period of enforcement via Notice to Mariners.

Dated: September 28, 2021.

M.S. Jackson,

Captain, U.S. Coast Guard,

Captain of the Port Sector Columbia River.

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